Error to Circuit Court, Alexandria County.

Action by Wyatt Vaughan against the Washington, Alexandria & Mt. Vernon Railway Company. Judgment for plaintiff, and defendant brings error. Reversed and remanded for new trial.

Moore, Barbour & Keith and *Jas. R. & H. B. Caton,* for plaintiff in error.

Lewis H. Machen and *R. C. L. Moncure,* for defendant in error.

WOOLFOLK et al. *v.* GRAVES et al.

Jan. 12, 1911.

[69 S. E. 1039.]

1. Injunction (§§ 118, 208*)—Trespass—Sufficiency of Bill—Conformity of Decree to Pleadings.—A bill to restrain cutting timber on land described alleged that the land was part of a tract left for life to complainant E., remainder to W., and complainant D.; that W. transferred his interest to E., and recited the will book in which the will was recorded and the page of the book, and exhibited the deed of W. to E., alleged possession since 1873, and that the timber was kept for the maintenance of buildings and fences on the rest of the tract; that complainants had very little timber aside from that which could be used for that purpose; that the injuries could not be adequately compensated; that defendants were of doubtful solvency, and claimed the land by reason of the erroneous location of the boundary line of their adjoining land, and prayed for an injunction and general relief. Held, that the bill sufficiently set out complainants' title, and that the timber was essential to the enjoyment of their land, and that without equitable interference they would suffer irreparable injury, and that a decree fixing the location of the boundary line and perpetually enjoining defendants from further trespassing on complainants' land did not go beyond the scope of the bill.

[Ed. Note.—For other cases, see Injunction, Cent. Dig. §§ 223-242, 430-432; Dec. Dig. §§ 118, 208.* 7 Va.-W. Va. Enc. Dig. 526, et seq.; 2 id. 610.]

2. Injunction (§ 194*)—Relief Granted—Complete Relief.—In a suit to restrain defendants from cutting timber on land claimed by complainants and in their possession, to which defendants, who owned adjoining land, claimed title as being a part of their land under a survey which located the boundary line so as to include the land in question, the court, in addition to granting an injunction, may also adjudicate the title, as jurisdiction in equity, having once attached

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

for the purpose of injunction, will be retained until the whole controversy is decided.

[Ed. Note.—For other cases, see Injunction, Cent. Dig. § 414; Dec. Dig. § 194.* 1 Va.-W. Va. Enc. Dig. 171, et seq.]

3. Boundaries (§ 3*)—Evidence—Marks on Ground.—In locating a disputed boundary line, marks on the ground are entitled to preference over courses and distances.

[Ed. Note.—For other cases, see Boundaries, Cent. Dig. § 3141; Dec. Dig. § 3.* 2 Va.-W. Va. Enc. Dig. 582.]

Appeal from Circuit Court, Spottsylvania County.

Action by E. M. Graves and another against Samuel Woolfolk and another. Judgment for complainants, and defendants appeal. Affirmed.

Gordon & Gordon and *S. P. Powell,* for appellants.

Carter & Carter, for appellees.

ADAMSON'S ADM'R *v.* NORFOLK & P. TRACTION CO. et al.

Jan. 12, 1911.

[69 S. E. 1055.]

1. Negligence (§ 72*)—Contributory Negligence—Sudden Peril.—One confronted with sudden peril through the fault of another is not required to exercise the presence of mind which a reasonably prudent man under ordinary circumstances must exercise.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. §§ 99, 100; Dec. Dig. § 72.* 10 Va.-W. Va. Enc. Dig. 392, et seq.]

2. Trial (§ 295*)—Instructions—Construction as a Whole.—Instructions must be read as a whole, and if, when so read, they could not have misled the jury, a verdict will not be disturbed merely because one of the instructions if standing alone was defective.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 703-717; Dec. Dig. § 295.* 7 Va.-W. Va. Enc. Dig. 743.]

3. Trial (§ 295*)—Instructions—Construction as a Whole.—Where, in an action for the death of a trolley car passenger jumping from the car onto a parallel track in front of an approaching car to avoid danger of a collision by a car running into the car on which he was riding, the theory of plaintiff was that defendant had negligently placed decedent in a perilous position, and the theory of defendant was that decedent had not been placed in a position of imminent peril, an instruction that, if decedent and defendant were both negligent and the negligence of both caused the death of decedent, the verdict must be for defendant, though the degree of negligence of defendant was greater than that of decedent, forming a part of the charge presenting the theory of defendant that, while there was a

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.